

# **EXHIBIT 2**

**First Deposition of Andrew  
Zimbalist (redacted)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

- - - - - x

Cung Le, Nathan Quarry, John Fitch

Brandon Vera, Luis Javier Vazquez,

and Kyle Kingsbury on behalf of

themselves and all others

similarly situated, Case No.

Plaintiffs, 2:15-cv-01045-RFB(PAL)

V.

Zuffa, LLC, d/b/a Ultimate,

Fighting Championship and UFC,

Defendants.

- - - - - x

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF

ANDREW ZIMBALIST, Ph.D.

Northampton, Massachusetts

Magna Legal Services Reported By:

(866) 624-6221 MaryJo O'Connor, RMR/CSR

Www.MagnaLS.com Job No: 345726

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 6 Monday, September 25, 2017 7 8:42 a.m. 8 9 VIDEOTAPED DEPOSITION of ANDREW 10 ZIMBALIST, Ph.D., held at Hotel 11 Northampton, 36 King Street, Northampton, 12 Massachusetts, pursuant to notice, before 13 MaryJo O'Connor, Registered Merit Reporter, 14 Certified Court Reporter, and Notary Public 15 in and for the Commonwealth of 16 Massachusetts. 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S, Cont. 2 3 ATTORNEYS FOR PLAINTIFFS: 4 COHEN MILSTEIN 5 1100 New York Avenue, NW 6 Suite 500, West Tower 7 Washington, D.C. 20005 8 (202)408-4600 9 BY: DANIEL H. SILVERMAN, ESQ. 10 dsilverman@cohenmilstein.com 11 12 13 ATTORNEYS FOR DEFENDANT ZUFFA, LLC, d/b/a 14 ULTIMATE FIGHTING CHAMPIONSHIP and UFC: 15 BOIES SCHILLER FLEXNER LLP 16 1401 New York Avenue, NW 17 11th Floor 18 Washington, D.C. 20005 19 (202) 237-2727 20 BY: WILLIAM A. ISAACSON, ESQ. 21 wisaacson@bsflp.com 22 RORY L. SKAGGS, ESQ. 23 rskaggs@bsflp.com 24 25 ALSO PRESENT: Luc-Bernard Val, Videographer</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 ATTORNEYS FOR PLAINTIFFS: 4 BERGER &amp; MONTAGUE, P.C. 5 1622 Locust Street 6 Philadelphia, Pennsylvania 19103 7 (215)875-3000 8 BY: ERIC L. CRAMER, ESQ. 9 ecramer@bm.net 10 11 12 ATTORNEYS FOR PLAINTIFFS: 13 JOSEPH SAVERI LAW FIRM 14 2130 Fulton Street 15 San Francisco, California 94117 16 (415)422-6223 17 BY: JOSHUA P. DAVIS, ESQ. 18 davisj@usfca.edu 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 -----I N D E X----- 2 3 WITNESS EXAMINATION BY PAGE 4 ANDREW ZIMBALIST MR. ISAACSON 9 5 6 -----EXHIBITS----- 7 ZIMBALIST EXHIBIT PAGE 8 Exhibit 1 9 Document entitled "Expert Report 10 of Andrew Zimbalist in Cung Le, et al 11 v. Zuffa, LLC"..... 7 12 Exhibit 2 13 Document entitled "Errata to the 14 Expert Report of Andrew Zimbalist in 15 Cung Le, et al, v. Zuffa, LLC"..... 7 16 Exhibit 3 17 Document entitled "Consolidated 18 Amended Antitrust Class Action 19 Complaint"..... 12 20 Exhibit 4 21 Exhibit 3, "Analysis of Revenues of 22 Expenses on an Event-by Event, 23 Boxer-by-Boxer Basis"..... 245 24 25</p>

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1 don't remember exactly how it came out, but 09:43:48  
 2 Zuffa in, say, two years ago had at least 09:43:51  
 3 90 percent of the top 15 fighters in the 09:43:56  
 4 weight classes that I looked at. So it was 09:43:59  
 5 somewhere along those lines. 09:44:02  
 6 Obviously, prior to the 09:44:03  
 7 acquisition of Strikeforce in 2011, they 09:44:05  
 8 had somewhat of a lower share, but it was 09:44:08  
 9 always a dominant share, at least in the 09:44:10  
 10 class period. 09:44:15  
 11 Q. When you're referring to metrics 09:44:15  
 12 that identify top fighters, are you 09:44:17  
 13 referring to published rankings? 09:44:19  
 14 A. Yes. 09:44:21  
 15 Q. And your report does not do any 09:44:24  
 16 actual work on identify who are the top 09:44:25  
 17 fighters and who are not? 09:44:28  
 18 A. That's correct. 09:44:30  
 19 Q. And when you say "a large share," 09:44:32  
 20 do you count that large share by the number 09:44:37  
 21 of fighters, that is by counting the 09:44:39  
 22 individuals? 90 percent would be nine out 09:44:43  
 23 of ten of the individual fighters? 09:44:45  
 24 A. As opposed to weighting them by 09:44:47  
 25 the -- 09:44:49

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1 Q. Weighting by anything. 09:44:50  
 2 A. Yes. I'm talking about a 09:44:51  
 3 straight headcount. 09:44:53  
 4 Q. Now, I asked -- one more 09:44:55  
 5 assumption I want to check on. Are you 09:45:22  
 6 assuming that the challenged conduct as a 09:45:23  
 7 whole is in violation of the antitrust 09:45:25  
 8 laws? 09:45:28  
 9 MR. CRAMER: For which purpose? 09:45:30  
 10 MR. ISAACSON: For purposes of 09:45:31  
 11 estimating damages. 09:45:32  
 12 A. I think the answer is yes. 09:45:34  
 13 Q. In Paragraph 4 you talk about 09:45:55  
 14 your assignment in this case. "Counsel for 09:46:00  
 15 Plaintiffs have asked me to determine." In 09:46:04  
 16 (a) it says, "whether the challenged 09:46:08  
 17 conduct is anticompetitive in character and 09:46:11  
 18 thus would have anticompetitive effects if 09:46:13  
 19 engaged in an entity with monopoly or 09:46:16  
 20 monopsony power." 09:46:19  
 21 I want to know what you mean by 09:46:21  
 22 "anticompetitive character." Is that 09:46:25  
 23 different from saying it's anticompetitive? 09:46:29  
 24 A. So I'm not doing a liability 09:46:31  
 25 report here. I was not asked to define 09:46:33

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1 "market." I was not asked to do 09:46:35  
 2 cross elasticity of demand or snip tests. 09:46:39  
 3 I've done no formal analysis of market 09:46:43  
 4 power here. 09:46:48  
 5 And so I'm -- when I say 09:46:49  
 6 "anticompetitive in character," I mean if a 09:46:54  
 7 company that had market power engaged in 09:46:57  
 8 this behavior, would it have 09:47:00  
 9 anticompetitive effects. 09:47:04  
 10 Q. All right. And does your report 09:47:15  
 11 do any analysis of the extent of the 09:47:17  
 12 anticompetitive effects from the challenged 09:47:21  
 13 conduct assuming that Zuffa had market 09:47:26  
 14 power? 09:47:29  
 15 A. Does it do any analysis? Say 09:47:29  
 16 that again? 09:47:32  
 17 Q. Of the extent of the 09:47:34  
 18 anticompetitive effect. 09:47:36  
 19 MR. CRAMER: Other than the 09:47:37  
 20 damages analysis? Or are you 09:47:38  
 21 including that? 09:47:40  
 22 Q. Well, is there an analysis of an 09:47:41  
 23 anticompetitive effect in your report other 09:47:51  
 24 than the damages analysis? 09:47:54  
 25 A. So I'm not clear what you're 09:48:02

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1 driving at. I have a discussion and 09:48:03  
 2 analysis of how the individual exclusionary 09:48:06  
 3 clauses impact the market and how it 09:48:12  
 4 forecloses the market. And then on the 09:48:15  
 5 basis of that, I do an empirical damage 09:48:20  
 6 estimate. 09:48:23  
 7 So when you said have I done any 09:48:24  
 8 analysis of the effect, I'm not sure what 09:48:30  
 9 you're... 09:48:32  
 10 Q. In your view, the damages in this 09:48:33  
 11 case would be an anticompetitive effect 09:48:35  
 12 that flowed from the challenged conduct in 09:48:38  
 13 this case if that conduct were true and if 09:48:40  
 14 Zuffa had market power, correct? 09:48:42  
 15 A. Yes. Yes. 09:48:45  
 16 Q. Is there any other 09:48:46  
 17 anticompetitive effect that you have 09:48:49  
 18 measured or quantified that flows from the 09:48:51  
 19 alleged exclusionary conduct in this case 09:48:54  
 20 assuming that Zuffa had market power? 09:49:02  
 21 A. Not that I have quantified, no. 09:49:04  
 22 Q. When you say "anticompetitive in 09:49:05  
 23 character" in your report, would it mean 09:49:09  
 24 the same thing if you just said 09:49:11  
 25 "anticompetitive"? 09:49:13

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1 to the absence of labor market competition. 10:19:36  
 2 So the comparators that I'm 10:19:43  
 3 looking at are comparators that have more 10:19:45  
 4 competitive labor markets to see what 10:19:49  
 5 happens to the labor share when the labor 10:19:51  
 6 markets are more competitive. 10:19:53  
 7 And I'm not particularly looking 10:19:57  
 8 for a comparison of clauses from a Zuffa 10:20:00  
 9 contract to an NBA contract or from the 10:20:03  
 10 Zuffa contract to a boxing contract. I'm 10:20:05  
 11 looking at whether or not there is a basis 10:20:09  
 12 structurally for being able to assert and 10:20:12  
 13 to know that there is competitive behavior 10:20:14  
 14 going on. 10:20:18  
 15 Q. So I'm trying to understand what 10:20:24  
 16 you're saying. I hate the phrase, but 10:20:26  
 17 you're familiar with the phrase the 10:20:29  
 18 "but-for world"? 10:20:30  
 19 A. I've heard it before. 10:20:32  
 20 Q. Yes. And for purposes of 10:20:33  
 21 estimating damages in your but-for world, 10:20:35  
 22 is the challenged conduct not happening? 10:20:38  
 23 And by "the challenged conduct," 10:20:42  
 24 I mean as you've defined it today in this 10:20:44  
 25 deposition. 10:20:46

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1 MR. CRAMER: Objection to form. 10:20:47  
 2 Go ahead. 10:20:48  
 3 A. The challenged conduct in Zuffa 10:20:48  
 4 leads to the absence of competition in the 10:20:49  
 5 labor market. I'm looking in a but-for 10:20:51  
 6 world where there is competition in the 10:20:55  
 7 labor market. 10:21:01  
 8 Q. I think I understand you, but I'm 10:21:02  
 9 going to go over it again to make sure. 10:21:04  
 10 Have you assumed that the 10:21:06  
 11 challenged conduct, as you've defined it in 10:21:18  
 12 this case, leads to reduced competition? 10:21:22  
 13 A. Well, I've either concluded that 10:21:26  
 14 or I've assumed it, but it's part of my 10:21:32  
 15 analysis. 10:21:35  
 16 Q. Well, I want to -- I appreciate 10:21:36  
 17 you telling me either assumed it or 10:21:39  
 18 concluded it. But does your report assume 10:21:42  
 19 that the challenged conduct led to reduced 10:21:44  
 20 competition? 10:21:47  
 21 A. Yes. 10:21:48  
 22 Q. And for purposes of damages, are 10:21:48  
 23 you comparing a world with more competition 10:21:57  
 24 to one with less competition? 10:22:00  
 25 A. Yes. 10:22:02

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1 Q. And any conduct that led to 10:22:02  
 2 reduced competition when if you use your 10:22:19  
 3 damages method would reach the same damages 10:22:29  
 4 result, correct? 10:22:33  
 5 MR. CRAMER: Objection to form. 10:22:34  
 6 A. Any conduct that led to the 10:22:39  
 7 absence of competition in the Zuffa labor 10:22:42  
 8 market would lead to the same -- 10:22:46  
 9 Q. I've been using the term "reduced 10:22:49  
 10 competition" as opposed to "absence of 10:22:53  
 11 competition." If they're -- but I will -- 10:22:55  
 12 if you want, we'll go over that 10:22:57  
 13 distinction. 10:23:00  
 14 But are you assuming that the 10:23:01  
 15 challenged conduct in this case led to an 10:23:07  
 16 absence of competition and not just reduced 10:23:10  
 17 competition? 10:23:12  
 18 A. If not complete absence, pretty 10:23:13  
 19 close to it. 10:23:25  
 20 Q. All right. Would any conduct -- 10:23:27  
 21 if you assume -- let's start over. 10:23:31  
 22 If I apply your damages method 10:23:36  
 23 where I compare a world with reduced 10:23:42  
 24 competition to one with more competition, 10:23:45  
 25 if I am estimating damages from anything 10:23:48

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1 that reduce competition, I'd reach the same 10:23:56  
 2 damages result; is that right? 10:23:59  
 3 MR. CRAMER: Objection to form. 10:24:00  
 4 A. I think that's fair. 10:24:01  
 5 Q. All right. So if would could 10:24:07  
 6 look at Page 81, which has your Table 4. 10:24:20  
 7 A. Would you prefer to look at the 10:24:32  
 8 errata that has the updated version? 10:24:34  
 9 Q. Yes, I was about to say. And I 10:24:37  
 10 understand that it's been slightly modified 10:24:38  
 11 by the errata. Sure, let's look at the 10:24:40  
 12 errata. Exhibit 2 Table 4-E. 10:24:44  
 13 [REDACTED] 10:25:04  
 14 [REDACTED] 10:25:05  
 15 corner, correct? 10:25:05  
 16 A. Yes. 10:25:06  
 17 Q. And that's obtained by comparing 10:25:06  
 18 a world with more competition to less 10:25:11  
 19 competition; is that correct? 10:25:15  
 20 A. Several worlds with more 10:25:15  
 21 competition, yes. 10:25:18  
 22 Q. And by "several worlds," you mean 10:25:18  
 23 NFL, NHL, NBA, MLB, boxing? 10:25:23  
 24 A. Correct. 10:25:25  
 25 Q. But there is actually one world 10:25:25

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1 A. I've explained some of the 12:56:24  
 2 reasons for which it's conservative. 12:56:26  
 3 Q. And you've explained why it's 12:56:28  
 4 conservative in your report. 12:56:30  
 5 A. Yes. 12:56:31  
 6 [REDACTED] 12:56:34  
 7 [REDACTED]  
 8 A. Yes. 12:56:36  
 9 Q. -- right, you are attributing all 12:56:36  
 10 of that amount, that all of that 12:56:39  
 11 difference, to what you have assumed to be 12:56:44  
 12 anticompetitive acts of Zuffa, correct? 12:56:46  
 13 A. That's correct. 12:56:49  
 14 Q. And you have not tried to inject 12:56:50  
 15 into your analysis what would be the effect 12:56:53  
 16 of considering any other explanation or 12:56:56  
 17 [REDACTED] 12:57:00  
 18 A. Such as? 12:57:03  
 19 Q. Anything. 12:57:05  
 20 MR. CRAMER: Objection to form. 12:57:05  
 21 A. That's correct. 12:57:06  
 22 Q. In speaking mathematically, if 12:57:08  
 23 there was a second variable or explanation 12:57:22  
 24 for that difference, let's call it X. If 12:57:26  
 25 you compared Zuffa and the five other 12:57:33

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1 sports and attributed all of the 12:57:39  
 2 [REDACTED] 12:57:44  
 3 anticompetitive conduct, by definition X 12:57:49  
 4 [REDACTED] 12:57:52  
 5 in damages. 12:57:55  
 6 MR. CRAMER: Objection to form. 12:57:57  
 7 Q. That's the way the model works, 12:57:57  
 8 right? 12:57:59  
 9 A. Well, not exactly. One would 12:58:00  
 10 have to identify the presence of X in the 12:58:04  
 11 five comparators and the absence of X in 12:58:09  
 12 Zuffa, and I haven't done that and you 12:58:13  
 13 haven't done that. So I can't say that we 12:58:15  
 14 would attribute the difference to X. 12:58:19  
 15 But what is true is that the five 12:58:22  
 16 comparators have considerably more 12:58:25  
 17 competition in their labor markets and 12:58:28  
 18 Zuffa doesn't have it. 12:58:31  
 19 So you would have to produce for 12:58:32  
 20 me a variable where it was present in the 12:58:34  
 21 five comparators but it's not present in 12:58:39  
 22 Zuffa. And then I would say, fine; that 12:58:42  
 23 variable, maybe along with the degree of 12:58:46  
 24 competition, together are causing the 12:58:49  
 25 underpayment of the Zuffa fighters. 12:58:53

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1 Q. If there was another explanation, 12:58:55  
 2 we'll call it X, that was the cause of some 12:58:58  
 3 or all of the difference between the five 12:59:04  
 4 sports leagues and Zuffa, some or all of 12:59:08  
 5 [REDACTED] 12:59:12  
 6 acts -- I know I got to start the question 12:59:17  
 7 over because I want to include 12:59:20  
 8 anticompetitive acts. 12:59:23  
 9 If there was another explanation 12:59:24  
 10 called X that was the cause of some of the 12:59:26  
 11 difference between the five sports leagues 12:59:28  
 12 and Zuffa -- we're talking about the share 12:59:29  
 13 of labor costs -- and some was caused by 12:59:31  
 14 anticompetitive acts, your damages model 12:59:35  
 15 would not be able to estimate the amount of 12:59:40  
 16 damages due to the anticompetitive acts; is 12:59:42  
 17 that correct? 12:59:44  
 18 A. And you're postulating, even 12:59:44  
 19 though you didn't explicitly say it, that 12:59:47  
 20 this variable X is present in the five 12:59:50  
 21 comparators and is not present -- 12:59:52  
 22 Q. Correct. 12:59:54  
 23 A. -- in Zuffa. 12:59:55  
 24 Then you're right, yes. 01:00:02  
 25 Q. If X was present in four of the 01:00:03

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1 five comparators, would your damages model 01:00:06  
 2 be able to estimate -- and so there were 01:00:14  
 3 some damages caused by anticompetitive 01:00:16  
 4 acts, some damages caused by X, and X was 01:00:18  
 5 not present in four of the -- 01:00:23  
 6 A. In one. 01:00:25  
 7 Q. Right. 01:00:26  
 8 -- and not present in one, 01:00:26  
 9 right -- thank you -- your model would not 01:00:28  
 10 be able to estimate damages; is that 01:00:33  
 11 correct? 01:00:35  
 12 A. Well, look, if we're traveling 01:00:35  
 13 down this hypothetical road, I would more 01:00:37  
 14 than likely not throw out the fifth 01:00:39  
 15 comparator where X wasn't present. And 01:00:41  
 16 also if I was trying to do this where I was 01:00:45  
 17 trying to segregate out the partial 01:00:47  
 18 influence of different variables, I 01:00:51  
 19 probably would be doing a year-by-year 01:00:53  
 20 analysis and doing multiple regression. I 01:00:55  
 21 wouldn't be using this model. 01:00:58  
 22 Q. If X was present in only one of 01:01:00  
 23 the comparators, and X contributed to the 01:01:08  
 24 difference between Zuffa and the five 01:01:13  
 25 sports, and anticompetitive acts 01:01:17



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1 contributed to the difference, would you be 01:01:20  
 2 able to estimate aggregate damages? 01:01:22  
 3 A. I'd throw out the one and I'd 01:01:24  
 4 have four comparators that didn't have 01:01:26  
 5 that. 01:01:29  
 6 Q. I must be saying this wrong, 01:01:29  
 7 because you'd have to throw out four under 01:01:31  
 8 my example. 01:01:34  
 9 A. Oh, I would? 01:01:34  
 10 Q. Yes. 01:01:37  
 11 A. Okay, so in you're saying -- 01:01:37  
 12 okay, in your -- what you want me to do 01:01:39  
 13 over and above is to estimate the influence 01:01:41  
 14 of X. 01:01:43  
 15 Q. Right. 01:01:43  
 16 A. And I only have one comparator in 01:01:44  
 17 the world that where X is present -- 01:01:45  
 18 Q. Yes. 01:01:48  
 19 A. -- and Zuffa doesn't have X. And 01:01:49  
 20 you want me to estimate damages with a 01:01:52  
 21 sample of one? 01:01:54  
 22 Q. Yes. 01:01:55  
 23 A. I'm not taking the case. 01:01:55  
 24 Q. Okay. And the sample of one 01:01:56  
 25 would be one of your five sports. That's 01:01:59

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1 what we're referring to in this context. 01:02:02  
 2 A. That's what I understood you to 01:02:04  
 3 be referring to. 01:02:06  
 4 Q. All right. When you have it, 01:02:07  
 5 your estimate of damages, would that be 01:02:21  
 6 also be called a yardstick analysis? 01:02:25  
 7 A. I guess you could call it that, 01:02:26  
 8 if you want to call it that. 01:02:28  
 9 Q. Is there another name in your 01:02:30  
 10 field that you would call it? 01:02:32  
 11 A. A comparator analysis. 01:02:33  
 12 Q. All right. Now, within your 01:02:36  
 13 field -- 01:02:40  
 14 A. Benchmark analysis. 01:02:40  
 15 Q. Benchmark, all right. 01:02:41  
 16 Within your field, are there 01:02:43  
 17 standards for estimating the effect of 01:02:46  
 18 alleged anticompetitive conduct in 01:02:52  
 19 estimating damages? 01:02:52  
 20 A. I have to ask you to repeat that, 01:02:52  
 21 because I was getting -- 01:03:10  
 22 Q. I'm going to ask the question 01:03:10  
 23 over. Don't worry about it. 01:03:10  
 24 A. Thank you. Sorry about that. 01:03:10  
 25 Q. Are there standards in your -- so 01:03:14

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1 you selected as a yardstick or benchmark 01:03:17  
 2 for purposes of determining damages in an 01:03:20  
 3 antitrust case the five sports comparisons 01:03:24  
 4 that are in your report, correct? 01:03:29  
 5 A. Yes. 01:03:30  
 6 Q. Now, is there a literature in 01:03:31  
 7 your field that set standards for how you 01:03:35  
 8 go about selecting benchmarks or yardsticks 01:03:38  
 9 in this circumstance? 01:03:41  
 10 MR. CRAMER: Objection to form. 01:03:43  
 11 A. A literature that details the 01:03:46  
 12 best way to select yardsticks? 01:03:51  
 13 Q. That sets standards for setting 01:03:53  
 14 yardsticks. 01:03:55  
 15 MR. CRAMER: Objection to the 01:03:56  
 16 extent it calls for a legal 01:03:57  
 17 conclusion. But you can answer, if 01:03:58  
 18 you understand the question. 01:04:00  
 19 A. I'm not sure there is a broad 01:04:07  
 20 literature. There are certain standards 01:04:08  
 21 where you try to take benchmarks that have 01:04:10  
 22 as much basic in common with the thing 01:04:13  
 23 you're comparing it to. 01:04:19  
 24 Q. All right. If -- 01:04:21  
 25 A. And it varies with one important 01:04:22

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1 characteristic. 01:04:25  
 2 Q. All right. If I wanted to 01:04:28  
 3 determine how an economist for purposes of 01:04:32  
 4 estimating damages using a yardstick or 01:04:35  
 5 benchmark in an antitrust case should go 01:04:38  
 6 about selecting an appropriate yardstick or 01:04:45  
 7 benchmark, where would I look? 01:04:48  
 8 A. You're asking me for the name of 01:04:51  
 9 an article or articles or a book? I can't 01:04:53  
 10 give that to you as I sit here. 01:04:56  
 11 You're talking about an antitrust 01:04:59  
 12 case rather than in general. You look for 01:05:01  
 13 industries that have competition in the 01:05:04  
 14 area that you're trying to identify that 01:05:06  
 15 have -- at the same time have as much in 01:05:11  
 16 common with the enterprise or the industry 01:05:14  
 17 that you're comparing it to. 01:05:16  
 18 Q. All right. Now, you say there 01:05:22  
 19 would have to be as much in common. Is 01:05:30  
 20 there a field of study that I would look 01:05:34  
 21 to, a type of article, a type of study? 01:05:37  
 22 How do I go about determining 01:05:43  
 23 what are the standards for an economist in 01:05:45  
 24 choosing a yardstick or benchmark in a 01:05:47  
 25 situation such as this? 01:05:51

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1 A. I can't point you to any journal 01:05:51  
 2 article. 01:05:54

3 Q. In picking a yardstick, would you 01:05:55  
 4 agree with the statement that you should 01:06:07  
 5 identify a firm or firms that are similar 01:06:09  
 6 to Zuffa in all respects except for the 01:06:14  
 7 impact of the alleged antitrust violation? 01:06:18

8 A. I believe that, as I said a 01:06:22  
 9 moment ago, that you try to pick 01:06:26  
 10 comparators that have as much in common 01:06:29  
 11 with the base enterprise or industry as 01:06:32  
 12 possible but vary in the important respect 01:06:34  
 13 that you're trying to identify. 01:06:38

14 Q. So what you have said is slightly 01:06:43  
 15 different than what I said, and I want to 01:06:45  
 16 explore that. 01:06:47

17 So you're using the phrase "as 01:06:48  
 18 much in common," and I'm using "similar in 01:06:51  
 19 all respects except for the impact of the 01:06:54  
 20 alleged antitrust violation," right? 01:06:56

21 A. Okay. 01:06:58

22 Q. Is it the appropriate standard 01:06:58  
 23 that you should identify a firm or firms 01:07:05  
 24 that are similar to Zuffa in all respects 01:07:07  
 25 except for the impact of the alleged 01:07:09

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1 antitrust violation? 01:07:11

2 MR. CRAMER: Objection. Asked 01:07:13  
 3 and answered. Also object to the 01:07:13  
 4 extent it calls for a legal 01:07:16  
 5 conclusion. But asked and answered, 01:07:17  
 6 and form. 01:07:18

7 A. If you're asking me -- 01:07:19

8 Q. My question is -- 01:07:21

9 A. If you're asking me wouldn't it 01:07:22  
 10 be desirable to have everything exactly the 01:07:24  
 11 same except the level of competition, I 01:07:26  
 12 would say yes. 01:07:28

13 We're doing the real world, not a 01:07:29  
 14 laboratory experiment here, and so you try 01:07:32  
 15 to find as much as possible in common 01:07:34  
 16 except for the variable that you're trying 01:07:36  
 17 to identify the impact of. That's what I 01:07:38  
 18 believe. 01:07:40

19 Now, if you want to use just 01:07:40  
 20 [REDACTED] 01:07:43  
 21 percentage, because I didn't consider some 01:07:46  
 22 higher percentage information, if you want 01:07:49  
 23 to use just boxing, I'll come out with 01:07:52  
 24 larger. And they're not identical in other 01:07:55  
 25 respects, but they're very similar. 01:07:58

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1 Q. But you've already told me, 01:08:00  
 2 however, you would not do a benchmark 01:08:00  
 3 analysis. You wouldn't even have taken the 01:08:04  
 4 case if you're doing a benchmark analysis 01:08:05  
 5 based on only one of the sports. 01:08:07

6 A. No, you were talking about 01:08:08  
 7 identifying multiple variables of 01:08:10  
 8 influence. 01:08:12

9 Q. All right. Am I correct that if 01:08:12  
 10 you were doing a benchmark analysis based 01:08:13  
 11 on only one of the five sports, you would 01:08:18  
 12 have declined to do that analysis? 01:08:21

13 A. No. Again, the context in which 01:08:23  
 14 you asked me that was you wanted me to 01:08:25  
 15 produce a methodology and be able to 01:08:29  
 16 separate out various causal influences on 01:08:31  
 17 the share being paid to labor. 01:08:34

18 If I had boxing data for enough 01:08:37  
 19 years, I could do a multiple regression 01:08:40  
 20 analysis that might have enough data in it 01:08:44  
 21 and might enable me to make a different 01:08:46  
 22 kind of an estimate. Which to my mind it's 01:08:49  
 23 always preferable to have more data and, in 01:08:51  
 24 this case, to have more sports, more 01:08:55  
 25 comparators, than fewer comparators. 01:08:58

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1 Q. Would you have taken the case if 01:09:02  
 2 you were asked to do a benchmark analysis 01:09:04  
 3 based on a comparison to boxing with the 01:09:06  
 4 data you have? 01:09:08

5 MR. CRAMER: Incomplete 01:09:11  
 6 hypothetical. Form. 01:09:13

7 A. So if I knew what I know today in 01:09:14  
 8 terms of the amount of boxing data that I 01:09:19  
 9 have -- 01:09:22

10 Q. Yes. 01:09:22

11 A. -- and I was back in last 01:09:22  
 12 December when I was approached about 01:09:24  
 13 working on this case, would I have taken 01:09:26  
 14 the case? 01:09:28

15 Q. Correct. 01:09:29

16 A. I would have to think about it. 01:09:29

17 Q. Now, going back to -- I 01:09:30  
 18 understand you've told me what would be 01:09:41  
 19 desirable -- it would be desirable to have 01:09:44  
 20 everything exactly the same. That's not my 01:09:46  
 21 question. 01:09:48

22 In the standards of your 01:09:48  
 23 profession as an economist conducting a 01:09:50  
 24 yardstick analysis, do you agree that using 01:09:52  
 25 a yardstick approach you should attempt to 01:09:56



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1 identify a firm or firms that are similar 01:09:59  
 2 to Zuffa in all respects except for the 01:10:01  
 3 impact of the antitrust violations? 01:10:04  
 4 MR. CRAMER: Asked and answered 01:10:06  
 5 several times. Form. Objection. 01:10:07  
 6 A. What I think -- what I would look 01:10:12  
 7 for is comparators that are as similar as 01:10:14  
 8 possible. I'd first look for the ones that 01:10:16  
 9 were similar in all respects. And if I 01:10:20  
 10 didn't find ones that are identical, I 01:10:23  
 11 would use them potentially if I felt like 01:10:26  
 12 those areas in which they were different 01:10:28  
 13 was not polluting the estimate that I was 01:10:30  
 14 making. 01:10:33  
 15 Q. And have you done any empirical 01:10:38  
 16 testing in this case to determine whether 01:10:43  
 17 any of the differences between the five 01:10:46  
 18 sports and Zuffa potentially pollute the 01:10:47  
 19 estimate that you have made? 01:10:51  
 20 A. Have I done any empirical? Yes, 01:10:53  
 21 I did. 01:10:55  
 22 Q. Okay. What empirical testing did 01:10:56  
 23 you do? 01:10:59  
 24 A. Well, Zuffa, as you know, or I 01:10:59  
 25 hope you know, in many documents that it 01:11:01

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1 commissioned and in statements that 01:11:07  
 2 Mr. Fertitta made and I believe that 01:11:09  
 3 Mr. Hendrick made -- I'm not certain about 01:11:14  
 4 him, but other people made -- they're quite 01:11:17  
 5 happy to compare Zuffa with -- the Zuffa 01:11:19  
 6 labor share with the share in team sports 01:11:24  
 7 and the share in bullfighting and the share 01:11:27  
 8 in tennis and the share in golf. They had 01:11:33  
 9 a study done by Mercer where all of these 01:11:35  
 10 comparators are included. 01:11:38  
 11 Mr. Fertitta at one point said 01:11:40  
 12 that it was appropriate to make the 01:11:42  
 13 comparison and that Zuffa did quite well in 01:11:43  
 14 the comparison. 01:11:46  
 15 So this methodology that you're 01:11:48  
 16 objecting to is something that Zuffa has 01:11:52  
 17 invited upon itself in various studies and 01:11:56  
 18 statements that its made over time. 01:11:59  
 19 Q. I understand that you're saying 01:12:02  
 20 that Zuffa has done comparisons between the 01:12:03  
 21 sports and decided that they were 01:12:07  
 22 appropriate, but that's not quite my 01:12:08  
 23 question. 01:12:11  
 24 I'm talking about -- you talked 01:12:11  
 25 about how the differences between the fact 01:12:14

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1 that it could potentially pollute the 01:12:15  
 2 differences between the five sports and 01:12:18  
 3 Zuffa. 01:12:20  
 4 Did you do any empirical testing 01:12:21  
 5 to determine whether any differences 01:12:24  
 6 between those sports do pollute the 01:12:27  
 7 estimate that you've made? 01:12:30  
 8 A. Yes, I did. 01:12:31  
 9 Q. And that was just looking at 01:12:32  
 10 Zuffa's statements where they compared 01:12:34  
 11 themselves to other sports? 01:12:36  
 12 A. No. 01:12:37  
 13 Q. Okay. What empirical testing did 01:12:38  
 14 you do? 01:12:40  
 15 A. So Mr. Fertitta initially said, 01:12:40  
 16 you know, "We're doing very well relative 01:12:42  
 17 to baseball and football and basketball." 01:12:44  
 18 And then somebody pointed out to him that 01:12:48  
 19 they weren't. And so he now had a new 01:12:51  
 20 explanation. And the explanation he gave 01:12:53  
 21 [REDACTED] 01:12:54  
 22 television, media production costs. 01:12:56  
 23 And so I fairly extensively 01:12:59  
 24 analyzed that, and I compared it to 01:13:00  
 25 baseball and made comments also about some 01:13:01

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1 of the other sports. 01:13:03  
 2 Q. So one factor you looked at to 01:13:04  
 3 determine whether it would pollute the 01:13:07  
 4 comparison is the fact that Zuffa took on 01:13:09  
 5 the television production costs? 01:13:13  
 6 A. Which is the only factor Zuffa 01:13:16  
 7 itself referenced in terms of understanding 01:13:18  
 8 the difference in labor costs, or the share 01:13:20  
 9 of labor costs. 01:13:22  
 10 Q. Did you look at any other 01:13:23  
 11 differences that would pollute the 01:13:28  
 12 comparison between the other sports as a 01:13:29  
 13 yardstick and Zuffa? 01:13:31  
 14 A. As I sit here today, I can't 01:13:32  
 15 think of anything off the top of my head. 01:13:46  
 16 There might be in my report, but I can't 01:13:48  
 17 think of anything. 01:13:50  
 18 Q. Do I understand your testimony 01:13:50  
 19 correctly that ideally in using a 01:13:51  
 20 yardstick, you would like to identify a 01:13:56  
 21 firm that's similar to Zuffa in all 01:13:59  
 22 respects but for the impact of the 01:14:01  
 23 antitrust violation. But absent that, you 01:14:03  
 24 will have looked to firms that have as much 01:14:07  
 25 in common as you can find? 01:14:09

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1 A. As similar as possible. And 01:14:11  
 2 also, then, to try to adjust for any things 01:14:13  
 3 that are not common. 01:14:16  
 4 Q. Is there any literature in your 01:14:16  
 5 field, any textbook, anything that you can 01:14:20  
 6 point to that says that the appropriate way 01:14:25  
 7 to select a yardstick or benchmark is to 01:14:28  
 8 find firms that are as similar as possible? 01:14:31  
 9 A. As I said before, I cannot cite 01:14:33  
 10 today any literature or specific journal 01:14:37  
 11 articles. 01:14:43

12 Q. In selecting yardstick firms, 01:14:43  
 13 should you look at -- 01:14:46  
 14 A. Let me add something, because I'm 01:14:47  
 15 not responding with specific journal 01:14:51  
 16 articles. I have been involved in academic 01:14:53  
 17 exercises and I've been involved in expert 01:14:59  
 18 testimony in other cases where the standard 01:15:01  
 19 of seeking comparators as similar as 01:15:03  
 20 possible and then making adjustments is 01:15:07  
 21 practiced. And I believe it's practiced 01:15:09  
 22 widely. 01:15:11

23 Q. Can you identify any other areas 01:15:12  
 24 where the standard of seeking comparators 01:15:15  
 25 as similar as possible as opposed to 01:15:17

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1 similar in all respects except for the 01:15:20  
 2 conduct at issue -- 01:15:24  
 3 A. It's done all the time in real 01:15:25  
 4 estate. 01:15:28  
 5 Q. All right. And when you say 01:15:28  
 6 "It's done ... in real estate," what are 01:15:29  
 7 you referring to? 01:15:34  
 8 A. Well, it's done when assessors or 01:15:34  
 9 appraisers evaluate the value of a house. 01:15:37  
 10 They look at two houses. Hopefully, 01:15:40  
 11 they're in the same neighborhood. Even 01:15:43  
 12 though they're in the same neighborhood, 01:15:45  
 13 one might be closer to a main street, one 01:15:47  
 14 is a little bit further from the main 01:15:47  
 15 street, They make an adjustment for that. 01:15:50  
 16 One has five bathrooms, one as four 01:15:50  
 17 bathrooms. They make an adjustment for 01:15:53  
 18 that. 01:15:54  
 19 But you're talking about, you 01:15:55  
 20 know, family houses in the same 01:15:56  
 21 neighborhood and they have different 01:16:00  
 22 values. So you control for all of these 01:16:02  
 23 different things, even though they're not 01:16:04  
 24 identical. 01:16:06  
 25 I was involved earlier this year 01:16:06

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1 in a case in San Francisco where the 01:16:08  
 2 appraisers in the City of San Francisco, 01:16:11  
 3 the appraiser board, was trying to 01:16:14  
 4 determine what the appropriate possessory 01:16:16  
 5 interest tax to be levied on the Giants, 01:16:20  
 6 San Francisco Giants, was for AT&T Park. 01:16:24  
 7 And the analysis that was done by 01:16:28  
 8 the appraisers hired by the Giants was 01:16:31  
 9 precisely that: They were looking at the 01:16:34  
 10 parcel in China Basin where AT&T Park sits, 01:16:36  
 11 and comparing it to other lots that were 01:16:48  
 12 either on the bay or near the bay and had 01:16:50  
 13 different -- had differential access to the 01:16:52  
 14 downtown district, the business district. 01:16:56  
 15 So you do this all the time, and 01:16:58  
 16 it's -- in reality, we're not dealing with 01:17:01  
 17 laboratories. We're dealing with real 01:17:04  
 18 things and they don't usually resemble each 01:17:06  
 19 other exactly in all variables but one. 01:17:09  
 20 Q. And you don't consider the five 01:17:15  
 21 sports to resemble each other exactly in 01:17:17  
 22 all variables, except the one of the 01:17:19  
 23 alleged anticompetitive act? 01:17:23  
 24 A. They don't resemble in all 01:17:24  
 25 variables, except one. And the one that I 01:17:26

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1 spent time looking at is the one that Zuffa 01:17:28  
 2 suggested was the one that made it 01:17:29  
 3 different. 01:17:30  
 4 Q. And you've used the example of 01:17:30  
 5 appraising the value of a house. Also I 01:17:35  
 6 guess you were appraising -- I'm not sure 01:17:37  
 7 what you were appraising in San Francisco, 01:17:44  
 8 but there was another appraisal. 01:17:46  
 9 Do you consider the method of 01:17:49  
 10 damages analysis you've used here to be 01:17:50  
 11 analogous or the same as an appraisal on 01:17:53  
 12 real estate? 01:17:56  
 13 A. Excuse me. You're asking me 01:17:57  
 14 about the practice and the discipline with 01:17:58  
 15 regard to using -- identifying comparators 01:18:00  
 16 and the legitimacy of using those 01:18:03  
 17 comparators with some base enterprise in 01:18:05  
 18 order to derive an estimate of an impact. 01:18:09  
 19 And I'm giving you examples, multiple 01:18:11  
 20 examples, of ways that that's done all the 01:18:14  
 21 time. 01:18:16  
 22 Q. And so in doing your -- but the 01:18:17  
 23 examples you're using were real estate 01:18:21  
 24 appraisals, either in relationship to 01:18:24  
 25 houses or a stadium; is that right? 01:18:27

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1 A. That's correct. 01:18:29  
 2 Q. And in choosing a yardstick in 01:18:30  
 3 this case -- let me say there are standards 01:18:36  
 4 for the appraisals of real property or 01:18:40  
 5 stadiums, right? 01:18:43  
 6 A. Yes. 01:18:44  
 7 Q. Would you consider yourself -- do 01:18:45  
 8 you believe that you should follow those 01:18:52  
 9 standards in estimating -- in picking a 01:18:54  
 10 yardstick in this case? 01:18:56  
 11 A. I think that I've followed those 01:18:58  
 12 standards and I've described that already. 01:18:59  
 13 Q. And those standards for a real 01:19:01  
 14 estate appraisal or a stadium appraisal, 01:19:05  
 15 where would those be set forth? 01:19:09  
 16 A. There are real estate handbooks, 01:19:11  
 17 appraisers' handbooks. 01:19:13  
 18 Q. And those are handbooks that 01:19:13  
 19 you're familiar with? 01:19:14  
 20 A. In part. I've read them. I 01:19:15  
 21 didn't do the analysis I was just 01:19:17  
 22 describing for China Basin and AT&T Park. 01:19:19  
 23 I didn't do it. They were working on the 01:19:23  
 24 same side of the case as I was. There were 01:19:24  
 25 real estate appraisers who were doing that. 01:19:28

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1 Q. And you wouldn't consider 01:19:30  
 2 yourself as an expert in appraisals, I 01:19:31  
 3 assume? 01:19:34  
 4 A. No, but you asked me if I was 01:19:34  
 5 familiar with those handbooks. 01:19:36  
 6 Q. And is there anything within the 01:19:37  
 7 field of economics that is -- you told me 01:19:40  
 8 that there were standards for appraisals. 01:19:45  
 9 Is there anything within the 01:19:47  
 10 field of economics or damages analysis that 01:19:48  
 11 you could point to that would establish any 01:19:51  
 12 standards for selecting a yardstick? 01:19:53  
 13 A. So we -- it's done all the time 01:19:55  
 14 with multiple regression analysis. You 01:19:57  
 15 have control variables that try to control 01:19:59  
 16 for the differences in sets of data or in 01:20:01  
 17 outcomes. There is no presumption that 01:20:09  
 18 there is -- that you're able to control all 01:20:13  
 19 the other variables. All you're trying to 01:20:15  
 20 do is estimate the impact that, including 01:20:18  
 21 those variables, would have on the 01:20:21  
 22 coefficient that you're looking at. 01:20:22  
 23 But, again, this is not a 01:20:24  
 24 laboratory where you can set the 01:20:28  
 25 temperature at 98 degrees and you can put 01:20:29

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1 so much acidity in the bowl, and so on and 01:20:33  
 2 so forth. This is the real world, and you 01:20:37  
 3 do the best you can to control for the 01:20:39  
 4 influences that are out there. 01:20:41  
 5 Q. All right. So in the field of 01:20:46  
 6 economics, there is a literature and a 01:20:47  
 7 discussion and a field that discusses how 01:20:50  
 8 to appropriately conduct a multiple 01:20:54  
 9 regression analysis. Do you agree with 01:20:58  
 10 that? 01:21:00  
 11 A. Yes. 01:21:00  
 12 Q. In the field of economics, 01:21:03  
 13 however, you can't point me to any 01:21:04  
 14 literature discussion or anything else in 01:21:07  
 15 the field that discusses how to 01:21:08  
 16 appropriately select a yardstick for an 01:21:10  
 17 analysis such as you've conducted; is that 01:21:15  
 18 right? 01:21:17  
 19 MR. CRAMER: Asked and answered. 01:21:17  
 20 I'm sorry. 01:21:17  
 21 THE WITNESS: I'm sorry, what did 01:21:22  
 22 you say? 01:21:22  
 23 MR. CRAMER: I wasn't sure if he 01:21:23  
 24 was done. 01:21:25  
 25 MR. ISAACSON: I'm done. 01:21:26

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1 MR. CRAMER: Asked and answered. 01:21:29  
 2 Go ahead. 01:21:29  
 3 A. Yes. I believe I answered that 01:21:29  
 4 question at least once. 01:21:31  
 5 Q. I just want to make sure I have 01:21:37  
 6 it right. I apologize if sometimes we're 01:21:37  
 7 having a discussion and --  
 8 THE WITNESS: Madam Court  
 9 Reporter, are you able to --  
 10 Q. I can read it back I think.  
 11 In the field of economics -- 01:21:37  
 12 A. No, no. I want her to read back 01:21:39  
 13 my answer. 01:21:40  
 14 Q. Your answer was -- you haven't 01:21:41  
 15 answered this question. You said, "I 01:21:46  
 16 answered that question at least once." 01:21:47  
 17 MR. CRAMER: Earlier in the 01:21:49  
 18 deposition. You asked it about ten 01:21:50  
 19 or fifteen minutes ago. 01:21:51  
 20 Q. Okay. Let's just see if we can 01:21:52  
 21 get this. 01:21:54  
 22 In the field of economics, you 01:21:55  
 23 can't point me to any literature or 01:21:56  
 24 discussion or anything else in the field 01:21:58  
 25 that discusses how to appropriately select 01:21:59

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1	a yardstick for an analysis such as you've	01:22:02	1	want to see the differential behavior	01:23:40
2	conducted; is that right?	01:22:05	2	between the firms in terms of antitrust	01:23:47
3	MR. CRAMER: Same objections.	01:22:06	3	issues you're saying?	01:23:49
4	A. I think I said before at least	01:22:07	4	Q. If you look at firms to determine	01:23:50
5	once, and I'll say it again, that I cannot	01:22:10	5	whether the difference between them is	01:23:51
6	point you to any journal article that would	01:22:12	6	solely due to the effect of alleged	01:23:53
7	identify a methodology for selecting	01:22:15	7	anticompetitive conduct, should you compare	01:23:54
8	yardsticks.	01:22:17	8	the capitalizations of the firms?	01:23:55
9	Q. When you select, when you're	01:22:18	9	MR. CRAMER: Objection to form.	01:23:56
10	comparing firms as yardsticks, should you	01:22:22	10	A. And you're looking at these firms	01:23:58
11	look at the quantity and quality of the	01:22:24	11	in order to see what outcomes?	01:24:01
12	sales and marketing organizations of the	01:22:27	12	There is a hypothesis that says	01:24:07
13	businesses?	01:22:28	13	these firms have different behavior, they	01:24:09
14	A. When you're comparing firms about	01:22:28	14	have different outcomes because of the	01:24:13
15	what?	01:22:33	15	degree to which they might impinge on	01:24:15
16	Q. As a potential yardstick.	01:22:34	16	antitrust laws. Is that what you're --	01:24:17
17	A. No, no. You're comparing firms	01:22:35	17	Q. Or, in your terms, of whether	01:24:19
18	along what variable? What are you trying	01:22:37	18	they've engaged in the anticompetitive	01:24:21
19	to discern?	01:22:40	19	conduct.	01:24:23
20	Q. So you talked about how you want	01:22:40	20	A. It's -- you really have to give	01:24:25
21	the firms to be as comparable --	01:22:42	21	me more of that picture to respond to you.	01:24:28
22	A. Right.	01:22:42	22	Q. Well, if you're taking two firms	01:24:29
23	Q. -- as possible.	01:22:44	23	and you're deciding whether to compare	01:24:34
24	A. Okay.	01:22:45	24	them, determine whether a comparison is	01:24:36
25	Q. All right. Is one factor which	01:22:46	25	appropriate to determine whether the	01:24:39
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1	you should look at the respective quantity	01:22:47	1	difference between them is solely due to	01:24:41
2	and quality of the sales and marketing of	01:22:51	2	anticompetitive conduct by one, can you	01:24:44
3	the businesses you're going to compare?	01:22:54	3	tell me factors that you should consider in	01:24:47
4	A. Probably. But you haven't told	01:22:56	4	determining whether that comparison is --	01:24:50
5	me what you're trying to find out about the	01:22:58	5	A. And so -- right. So what I --	01:24:52
6	firms. Say it's profitability, for	01:23:00	6	Q. Let me finish.	01:24:54
7	instance?	01:23:03	7	A. Okay.	01:24:54
8	Q. Right.	01:23:03	8	Q. If you're taking two firms and	01:25:12
9	A. Well, surely you'd want to look	01:23:03	9	you're deciding whether to compare them and	01:25:14
10	at quality of management.	01:23:05	10	determine whether a comparison is	01:25:16
11	Q. If you're looking at firms to	01:23:06	11	appropriate to see whether the difference	01:25:18
12	determine whether the differences between	01:23:08	12	between them is solely due to	01:25:20
13	them is solely due to the effect of alleged	01:23:09	13	anticompetitive conduct by one, can you	01:25:22
14	anticompetitive conduct, should you also	01:23:14	14	tell me the factors you should consider in	01:25:24
15	look at their respective sales and	01:23:16	15	determining whether that comparison is	01:25:26
16	marketing efforts?	01:23:19	16	appropriate?	01:25:27
17	MR. CRAMER: Incomplete	01:23:20	17	MR. CRAMER: Objection to form.	01:25:28
18	hypothetical. Objection.	01:23:21	18	Are you asking in this hypothetical	01:25:28
19	A. Yeah, I think it's incomplete,	01:23:23	19	-- what are you trying to determine	01:25:31
20	but I'll go along with you. Probably it	01:23:25	20	in this hypothetical about the	01:25:33
21	would be a good idea to look at that.	01:23:27	21	differences between the firms?	01:25:34
22	Q. In making that comparison, should	01:23:29	22	Because I don't think he's...	01:25:36
23	you look at the respective capitalization	01:23:31	23	Q. All right. When you're looking	01:25:38
24	of the businesses?	01:23:33	24	at whether to choose a firm as a yardstick	01:25:41
25	A. Okay. So you're positing that we	01:23:34	25	and your purpose of using this yardstick is	01:25:46



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<p>1 to determine whether a comparison with the 01:25:49  2 yardstick to another firm is solely due 01:25:51  3 anticompetitive conduct by the other firm, 01:25:59  4 what factor should you consider to 01:26:01  5 determine whether that's an appropriate 01:26:02  6 yardstick? 01:26:04  7 A. I'm sorry, and -- 01:26:04  8 MR. CRAMER: And a yardstick to 01:26:05  9 determine what? 01:26:06  10 THE WITNESS: Right. 01:26:07  11 MR. CRAMER: I don't think he's 01:26:07  12 following your hypothetical. 01:26:09  13 MR. ISAACSON: Well, he hasn't 01:26:10  14 said that. 01:26:12  15 A. So we have -- we're engaging in 01:26:12  16 this exercise to compare these two firms, 01:26:15  17 because one of the firms presumably has 01:26:19  18 done something; maybe their prices are much 01:26:21  19 higher, maybe their output is much lower, 01:26:23  20 maybe there is a quality of output 01:26:26  21 question. 01:26:29  22 So I'm trying to ask you, what is 01:26:29  23 it that we're trying to explain? And you 01:26:31  24 said one of the variables we're using, 01:26:33  25 we're trying to explain something, whatever 01:26:34</p>	<p>1 A. Yes. 01:27:18  2 Q. In deciding whether that 01:27:18  3 comparison to other firms is appropriate -- 01:27:23  4 A. Right. 01:27:25  5 Q. -- what factors should you look 01:27:26  6 at to determine whether that's an 01:27:30  7 appropriate comparison? 01:27:34  8 A. And you were suggesting based 01:27:36  9 upon your incomplete hypothetical that the 01:27:38  10 quality of management is one thing that I 01:27:40  11 should be looking at; is that correct? Is 01:27:42  12 that where we're -- 01:27:45  13 Q. Where we -- 01:27:46  14 A. I'm trying to cut to the chase -- 01:27:47  15 Q. I'm asking you -- 01:27:49  16 A. -- because you're asking vague 01:27:51  17 broad questions. 01:27:54  18 Q. I'm asking you within the 01:27:54  19 standards of your field -- 01:27:57  20 A. Right. 01:27:57  21 Q. -- in selecting a yardstick -- 01:27:57  22 A. Right. 01:27:59  23 Q. -- where you're comparing it to 01:27:59  24 Zuffa, what are the things you should look 01:28:01  25 at to determine whether it's an appropriate 01:28:05</p>
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<p>1 it is. One of the variables we're looking 01:26:36  2 at is anticompetitive behavior, right? 01:26:38  3 Q. Right. Let me see if I can help 01:26:42  4 you out with this. 01:26:43  5 A. Okay. 01:26:44  6 Q. In this case, you compared some 01:26:45  7 other firms -- 01:26:47  8 A. Right. 01:26:48  9 Q. -- to Zuffa -- 01:26:48  10 A. Right. 01:26:50  11 Q. -- to determine whether -- 01:26:50  12 A. Right. 01:26:52  13 Q. -- and you concluded that the 01:26:52  14 differences between those firms -- 01:26:54  15 A. Right. 01:26:56  16 Q. -- were due to -- 01:26:56  17 A. Now can I look at -- 01:26:57  18 Q. -- were due to the alleged 01:26:58  19 anticompetitive conduct by Zuffa, correct? 01:27:02  20 A. Correct. 01:27:03  21 Q. And you decided that it was 01:27:04  22 appropriate to compare those other firms 01:27:07  23 and decide that the only difference between 01:27:10  24 those firms was due to the alleged 01:27:13  25 anticompetitive conduct, correct? 01:27:15</p>	<p>1 yardstick? 01:28:08  2 A. Look at anticompetitive behavior 01:28:08  3 in the two leagues or in the comparator 01:28:16  4 group and Zuffa, look at the factor that 01:28:20  5 Zuffa says distinguishes it from the other 01:28:23  6 league. 01:28:26  7 The notion that I should look at 01:28:30  8 quality of management is problematic for 01:28:31  9 several reasons. 01:28:34  10 Q. I just want to -- 01:28:36  11 MR. CRAMER: Were you done with 01:28:37  12 your answer? 01:28:38  13 A. I'm not done. 01:28:39  14 Q. I will let him, but for purposes 01:28:40  15 of my question to save time, I'm trying to 01:28:41  16 ask him what it is you think was 01:28:45  17 appropriate -- what you should consider. 01:28:46  18 You told me the comparison of the 01:28:48  19 anticompetitive conduct and you told me 01:28:50  20 Zuffa's explanation of the production, 01:28:52  21 correct? 01:28:53  22 A. Right. 01:28:53  23 MR. CRAMER: Zuffa's what? 01:28:54  24 Q. That Zuffa handles TV production. 01:28:56  25 He said it's that. Okay? 01:29:00</p>



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<p>1 at? What would you want to study to 02:01:06</p> <p>2 determine whether it was an appropriate 02:01:07</p> <p>3 comparison? 02:01:09</p> <p>4 MR. CRAMER: Same objection. He 02:01:09</p> <p>5 already answered. 02:01:10</p> <p>6 A. So there are capital costs for 02:01:11</p> <p>7 the physical studios, there are 02:01:16</p> <p>8 transportation cost, there are insurance 02:01:19</p> <p>9 costs, there are administrative costs. I 02:01:21</p> <p>10 would like to study those, the size of them 02:01:24</p> <p>11 and how they vary before I would throw this 02:01:27</p> <p>12 into the hopper as a comparator. 02:01:30</p>	<p>1 about variability of revenue. You just 02:03:20</p> <p>2 answered risk. 02:03:20</p> <p>3 Are those interchangeable for 02:03:22</p> <p>4 purposes of this discussion? 02:03:24</p> <p>5 A. Risk and variability of revenue? 02:03:25</p> <p>6 Q. Yes. 02:03:28</p> <p>7 A. Interchangeable, no. But very 02:03:28</p> <p>8 similar. Overlapping. Substantial 02:03:31</p> <p>9 overlapping. 02:03:34</p> <p>10 Q. So you would want to look at in 02:03:35</p> <p>11 determining whether to compare the firms, 02:03:37</p> <p>12 you would want to look at the overall risk 02:03:39</p> <p>13 profile, and that would include the 02:03:41</p> <p>14 variability of revenue across projects? 02:03:43</p> <p>15 A. Yes. 02:03:45</p>
<p>13 Q. What would you be looking at to 02:01:35</p> <p>14 determine with respect to those costs to 02:01:37</p> <p>15 determine whether the comparison was valid? 02:01:39</p> <p>16 A. I would want to look at the share 02:01:41</p> <p>17 of those costs as a share of total revenue. 02:01:43</p> <p>18 Q. So would you be looking at 02:01:48</p> <p>19 whether the share of those costs was, for 02:01:50</p> <p>20 example, higher than the share of similar 02:01:52</p> <p>21 cost for Zuffa or less? I'm trying to 02:01:56</p> <p>22 understand what you're looking for. 02:01:58</p> <p>23 MR. CRAMER: Asked and answered. 02:01:59</p> <p>24 Objection. 02:02:00</p> <p>25 A. I would look at the relative 02:02:00</p>	<p>16 Q. Are there any other factors that 02:03:46</p> <p>17 you would want to investigate or study to 02:03:53</p> <p>18 determine whether the comparison to the 02:03:55</p> <p>19 movie industry was appropriate? 02:03:57</p> <p>20 A. Yeah. 02:03:57</p> <p>21 Q. You've mentioned share of cost -- 02:03:59</p> <p>22 A. There might be. I can't think of 02:04:01</p> <p>23 any as I sit here. 02:04:02</p> <p>24 Q. You've got to let me finish the 02:04:03</p> <p>25 question. 02:04:06</p>
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<p>1 shares relative to Zuffa, relative to the 02:02:03</p> <p>2 other comparators. 02:02:05</p> <p>3 Q. Is there anything else you would 02:02:07</p> <p>4 be looking at to determine whether it was 02:02:17</p> <p>5 an appropriate comparison other than the 02:02:19</p> <p>6 share of costs that were paid by the movie 02:02:21</p> <p>7 studios? 02:02:29</p> <p>8 A. Yeah. I'd want to look at risk. 02:02:29</p> <p>9 I'd want to look at the variability of 02:02:32</p> <p>10 revenue across projects. 02:02:34</p> <p>11 Q. Why would the variability of 02:02:45</p> <p>12 revenue across projects be relevant to you 02:02:48</p> <p>13 in comparing two firms as yardsticks? 02:02:51</p> <p>14 A. Because other things being equal, 02:02:54</p> <p>15 you would expect two industries that were 02:02:56</p> <p>16 otherwise identical where one of them had 02:02:58</p> <p>17 more risk in it than the other, that in 02:02:59</p> <p>18 order to attract capital, the industry that 02:03:02</p> <p>19 had more risk would demand a higher rate of 02:03:04</p> <p>20 return. And a higher rate of return would 02:03:07</p> <p>21 mean there was less money available to pay 02:03:09</p> <p>22 labor in general. 02:03:11</p> <p>23 Q. And you said I want to look at 02:03:13</p> <p>24 risk, I want to look at the variability of 02:03:15</p> <p>25 revenue across projects. And I asked you 02:03:18</p>	<p>1 Now, you've -- 02:04:23</p> <p>2 MR. CRAMER: Maybe we should take 02:04:23</p> <p>3 a break. 02:04:25</p> <p>4 MR. ISAACSON: Yeah, we've been 02:04:25</p> <p>5 going for over an hour. 02:04:27</p> <p>6 VIDEO TECHNICIAN: Off the record 02:04:28</p> <p>7 at 2:04 p.m. 02:04:32</p> <p>8 (Proceedings recessed at 02:04:34</p> <p>9 2:04 p.m., and reconvened at 2:20 02:04:34</p> <p>10 p.m.) 02:21:13</p> <p>11 VIDEO TECHNICIAN: We're back on 02:21:13</p> <p>12 the record at 2:20 p.m. 02:21:16</p> <p>13 BY MR. ISAACSON: 02:21:18</p> <p>14 Q. We've discussed before that in 02:21:18</p> <p>15 estimating damages and comparing to a 02:21:28</p> <p>16 yardstick, you compared the percentage of 02:21:30</p> <p>17 revenues paid to athletes or fighters 02:21:33</p> <p>18 between other sports and Zuffa. And it's 02:21:37</p> <p>19 your -- now across industries and in the 02:21:44</p> <p>20 economics literature is there data or 02:21:59</p> <p>21 studies with the percentage of revenues 02:22:03</p> <p>22 that are paid to labor, whether those labor 02:22:05</p> <p>23 are employees or contractors in a 02:22:07</p> <p>24 competitive industry? 02:22:10</p> <p>25 MR. DAVIS: Objection to form. 02:22:15</p>

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<p>1 were antitrust cases? 02:30:17</p> <p>2 A. I'm not sure offhand. Maybe 02:30:20</p> <p>3 five. 02:30:22</p> <p>4 Q. Can you tell me any case where 02:30:22</p> <p>5 you previously estimated damages by 02:30:27</p> <p>6 comparing firms based on the percentage of 02:30:29</p> <p>7 revenues they paid to labor? 02:30:31</p> <p>8 MR. CRAMER: Objection to form. 02:30:34</p> <p>9 A. I'm not sure as I sit here that 02:30:34</p> <p>10 I've estimated damages to labor at all in 02:30:43</p> <p>11 an antitrust case. I might have, but I 02:30:49</p> <p>12 don't recall off the top of my head. 02:30:52</p> <p>13 Q. Can you identify to me any 02:30:53</p> <p>14 published literature in your field that has 02:30:55</p> <p>15 either looked at the issue of damages or 02:31:01</p> <p>16 the anticompetitive effect of conduct by 02:31:03</p> <p>17 comparing firms based on the percentage of 02:31:08</p> <p>18 revenue paid to labor? 02:31:10</p> <p>19 A. Can you repeat the question? 02:31:13</p> <p>20 Q. Sure. Can you identify to me any 02:31:14</p> <p>21 published literature in your field that has 02:31:17</p> <p>22 looked at the issue of damages or the 02:31:20</p> <p>23 anticompetitive effect of conduct by 02:31:22</p> <p>24 comparing firms based on the percentage of 02:31:23</p> <p>25 revenue paid to labor? 02:31:25</p>	<p>1 Sports Management, that's had some articles 02:32:49</p> <p>2 related to that. 02:32:51</p> <p>3 So I'm aware of the literature 02:32:52</p> <p>4 that's available on monopsony and empirical 02:32:54</p> <p>5 estimates of its impact in the sports 02:33:00</p> <p>6 field. 02:33:03</p> <p>7 Q. So are you aware of any 02:33:03</p> <p>8 peer-reviewed literature that is -- that 02:33:05</p> <p>9 looks at the effect of monopsony on the 02:33:08</p> <p>10 share of revenue paid to labor outside of 02:33:11</p> <p>11 the sports industry? 02:33:14</p> <p>12 A. I think I answered that already. 02:33:15</p> <p>13 I can't cite you any such literature today. 02:33:17</p> <p>14 Q. Within the field of sports 02:33:21</p> <p>15 economics that you mentioned, had there 02:33:29</p> <p>16 been any -- well, let me start over. 02:33:38</p> <p>17 You mentioned multiple regression 02:33:40</p> <p>18 analysis earlier. That's an established 02:33:44</p> <p>19 method within the field of economics for 02:33:47</p> <p>20 determining the potential of 02:33:51</p> <p>21 anticompetitive effect of conduct, correct? 02:33:53</p> <p>22 A. Yes. 02:33:57</p> <p>23 Q. Okay. And that's not limited to 02:33:57</p> <p>24 the sports industry, correct? 02:34:02</p> <p>25 A. Correct. 02:34:04</p>
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<p>1 MR. CRAMER: Objection to form. 02:31:26</p> <p>2 A. All right. Not as I sit here 02:31:27</p> <p>3 today, I can't. 02:31:30</p> <p>4 Q. Are you aware of any 02:31:30</p> <p>5 peer-reviewed literature anywhere that has 02:31:41</p> <p>6 determined or studied the anticompetitive 02:31:45</p> <p>7 effect of conduct by comparing firms based 02:31:50</p> <p>8 on the percentage of revenues paid to 02:31:54</p> <p>9 labor? 02:31:56</p> <p>10 A. I'm aware of literature, 02:31:58</p> <p>11 peer-reviewed literature, that looks at the 02:32:01</p> <p>12 effect of monopsony on labor share. 02:32:04</p> <p>13 Q. And what is that literature? 02:32:11</p> <p>14 A. Well, there is something called 02:32:13</p> <p>15 the Journal of Sports Economics. It's had 02:32:17</p> <p>16 a bunch of articles on that. 02:32:20</p> <p>17 There is a seminal article that 02:32:22</p> <p>18 was done by Jerry Scully in the American 02:32:24</p> <p>19 Economic Review in 1972. There is a book 02:32:27</p> <p>20 that was edited by Roger Noll called 02:32:29</p> <p>21 "Government in the Sports Business." Did I 02:32:34</p> <p>22 say it was published by Brookings? That's 02:32:36</p> <p>23 also rather old. 02:32:40</p> <p>24 There is a Journal of Sport 02:32:42</p> <p>25 Management, The International Journal of 02:32:46</p>	<p>1 Q. And that method has been, for 02:34:05</p> <p>2 example, subject to testing to determine 02:34:10</p> <p>3 whether it's a reliable method of -- if 02:34:14</p> <p>4 performed well of determining an 02:34:20</p> <p>5 anticompetitive effect. Do you agree with 02:34:24</p> <p>6 that? 02:34:26</p> <p>7 A. That it is a reliable method for 02:34:29</p> <p>8 determining anticompetitive effect? Is 02:34:33</p> <p>9 that what you're -- 02:34:35</p> <p>10 Q. Yes. And that's been determined 02:34:36</p> <p>11 by testing in the field. 02:34:38</p> <p>12 A. It's been determined to be what? 02:34:39</p> <p>13 Q. If performed correctly, a 02:34:41</p> <p>14 reliable method of determining -- 02:34:43</p> <p>15 A. Oh, yes. 02:34:45</p> <p>16 Q. And that's been determined by 02:34:45</p> <p>17 substantial testing in the economics 02:34:47</p> <p>18 literature. 02:34:48</p> <p>19 A. So it's been determined by 02:34:52</p> <p>20 testing that econometric testing is 02:34:53</p> <p>21 reliable? So what does that mean, it's 02:34:56</p> <p>22 been determined by testing that econometric 02:34:58</p> <p>23 evidence -- 02:35:02</p> <p>24 Q. Meaning it's been tested for 02:35:02</p> <p>25 accuracy across different models, for 02:35:04</p>

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1 example. 02:35:06  
 2 A. Okay. Yes. 02:35:06  
 3 Q. And that's all true of a 02:35:08  
 4 regression model? 02:35:09  
 5 A. Yes. 02:35:11  
 6 Q. Has there been any testing done 02:35:11  
 7 within the sports industry of whether a 02:35:14  
 8 comparison of the percentage of revenues 02:35:19  
 9 paid to labor by a sports business is a 02:35:22  
 10 reliable or valid means of evaluating an 02:35:25  
 11 anticompetitive effect? 02:35:30  
 12 A. As I sit here today, I can't 02:35:31  
 13 think of any such literature. 02:35:34  
 14 Q. If you wanted to test the 02:35:35  
 15 validity or reliability of looking at the 02:35:43  
 16 percentage of revenue paid to labor by a 02:35:48  
 17 firm as a method for assessing 02:35:52  
 18 anticompetitive impact, how would you go 02:35:57  
 19 about testing it? 02:36:00  
 20 MR. CRAMER: Objection to form. 02:36:00  
 21 A. Can you repeat the question? 02:36:01  
 22 Q. Sure. Suppose I wanted to test 02:36:07  
 23 the validity -- suppose you wanted to test, 02:36:08  
 24 which would be more valid, suppose you 02:36:11  
 25 wanted to test the validity or reliability 02:36:13

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1 of looking at the percentage of revenue 02:36:15  
 2 paid to labor by a firm as a method for 02:36:17  
 3 assessing anticompetitive impact, how would 02:36:19  
 4 you go about that testing process? 02:36:21  
 5 A. This is one firm in a particular 02:36:23  
 6 industry. And what data do I have at my 02:36:26  
 7 disposal? 02:36:29  
 8 Q. So I'm not being clear in my 02:36:31  
 9 question if you're asking about the data. 02:36:33  
 10 I'm positing a world where you 02:36:36  
 11 have good data; all right? 02:36:38  
 12 A. Okay, we have good data. Yeah. 02:36:40  
 13 Q. And you want to know whether 02:36:42  
 14 looking at the percentage of revenue paid 02:36:44  
 15 to labor as opposed to, for example, the 02:36:47  
 16 actual salaries or rate of salary increase. 02:36:52  
 17 If you want to know whether the percentage 02:36:59  
 18 of revenue is a valid method for looking at 02:37:01  
 19 whether there has been an anticompetitive 02:37:04  
 20 impact, how would you go about testing 02:37:06  
 21 that? 02:37:08  
 22 A. I want to find out if the 02:37:09  
 23 percentage of revenue paid in a particular 02:37:16  
 24 firm has an anticompetitive impact? 02:37:20  
 25 Q. You want to know whether that is 02:37:23

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1 an accurate and reliable method of 02:37:24  
 2 determining whether there is an 02:37:27  
 3 anticompetitive impact. 02:37:28  
 4 A. Wow. Um, so -- and I'm looking 02:37:29  
 5 at one firm in one industry? 02:37:34  
 6 Q. I'm talking about the method as 02:37:38  
 7 opposed to the firm. 02:37:40  
 8 A. But that's -- if you're asking me 02:37:43  
 9 to design an econometric model for you, I 02:37:46  
 10 have to know what you're talking about. I 02:37:51  
 11 have to know the parameters of what you're 02:37:52  
 12 talking about. 02:37:54  
 13 Clearly, one of the things that 02:37:55  
 14 one would be trying to set up here is you'd 02:37:56  
 15 have to have some independent index of 02:37:59  
 16 anticompetitive behavior. Maybe it would 02:38:01  
 17 be percent price increases over the course 02:38:06  
 18 of the past year. And you would look at 02:38:07  
 19 whether or not -- or if -- you might look 02:38:14  
 20 at the percent increase in wages. You 02:38:17  
 21 would expect to find that wage increases 02:38:20  
 22 would be smaller. 02:38:26  
 23 So you would look at a number of 02:38:28  
 24 firms in a number of industries, and the 02:38:30  
 25 independent variables would be the percent 02:38:34

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1 of revenue that's paid to labor and then 02:38:37  
 2 you'd have some criterion that was the 02:38:38  
 3 dependent variable, that would maybe it 02:38:44  
 4 would be price increases, maybe it would be 02:38:48  
 5 something else, that would be a proxy for 02:38:49  
 6 anticompetitive behavior, and you'd see 02:38:52  
 7 what the relationship is. 02:38:54  
 8 Q. That econometric model that you 02:38:58  
 9 just described, that was a regression 02:39:01  
 10 analysis? 02:39:03  
 11 A. It could be, yeah. 02:39:04  
 12 Q. One way of testing, rather, of 02:39:14  
 13 looking at percentage of revenues paid to 02:39:16  
 14 labor as a comparison between firms as a 02:39:17  
 15 valid method of assessing anticompetitive 02:39:20  
 16 impact would be to engage in a regression 02:39:26  
 17 analysis; is that correct? 02:39:29  
 18 A. It could be. 02:39:31  
 19 Q. And a regression analysis would 02:39:32  
 20 be an established, well-accepted method of 02:39:38  
 21 determining the effect of anticompetitive 02:39:42  
 22 behavior? 02:39:44  
 23 A. I think there is a lot of 02:39:44  
 24 controversy, frankly, in this application. 02:39:46  
 25 But, yes, it has been used very widely. 02:39:48

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1 Q. And if you conducted a regression 02:39:56  
 2 analysis of the anticompetitive effect of a 02:39:59  
 3 restriction on labor pay and the only 02:40:10  
 4 variable was the anticompetitive 02:40:16  
 5 restriction, what would be the problems 02:40:19  
 6 with that? 02:40:22  
 7 MR. CRAMER: Objection to form. 02:40:23  
 8 Incomplete hypothetical. Asked and 02:40:24  
 9 answered for that matter. 02:40:30  
 10 A. I'm not sure what you're asking. 02:40:35  
 11 But what one does when you use regression 02:40:39  
 12 analysis is generally using multiple 02:40:41  
 13 regression analysis. You want a control 02:40:44  
 14 for other variables. And you would have -- 02:40:46  
 15 you'd have your desired variables in there 02:40:55  
 16 along with the regression variable -- 02:40:58  
 17 excuse me -- along with the control 02:41:00  
 18 variables. 02:41:03  
 19 I haven't done a regression 02:41:05  
 20 analysis in this case. There is another 02:41:07  
 21 expert report that uses that methodology. 02:41:11  
 22 I've used a different methodology. And I 02:41:15  
 23 feel like I have successfully controlled 02:41:17  
 24 for most of the outside influences that 02:41:20  
 25 would allow me to make a clean inference 02:41:24

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1 about the impact that the level of 02:41:28  
 2 competition on the labor market has had on 02:41:29  
 3 the labor share. 02:41:31  
 4 Q. When you say when you "have 02:41:32  
 5 controlled for most of the outside 02:41:34  
 6 influences," you have not done that 02:41:38  
 7 actually within your model, correct? 02:41:40  
 8 MR. CRAMER: Objection to form. 02:41:44  
 9 A. Not within the model itself. But 02:41:44  
 10 as I explained to you earlier, Zuffa 02:41:46  
 11 pointed out the one variable that they 02:41:49  
 12 thought made their case special. And I did 02:41:52  
 13 account for that. I discussed that. 02:41:55  
 14 Other variables that we have 02:41:57  
 15 talked about today I don't think have a 02:41:58  
 16 decided inference on that question about 02:42:00  
 17 the riskiness of the investment and 02:42:06  
 18 questions about overall management quality. 02:42:10  
 19 I don't think that Zuffa stands 02:42:14  
 20 out in those regards, and Zuffa itself 02:42:16  
 21 didn't argue that it stood out in those 02:42:18  
 22 regards. 02:42:21  
 23 Q. And why did you choose to compare 02:42:26  
 24 the percentage of revenues paid to the five 02:42:28  
 25 other sports and UFC fighters as compared 02:42:30

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1 -- as opposed to the percentage of net 02:42:35  
 2 profits after costs? 02:42:37  
 3 A. Well, I don't have, and I don't 02:42:38  
 4 know that anybody has data on what you're 02:42:53  
 5 calling net profits. Do you mean net 02:42:55  
 6 income by the way? What are you talking 02:42:58  
 7 about? 02:43:00  
 8 Q. You said net income. 02:43:02  
 9 A. Yeah. So net income deducts 02:43:03  
 10 interest. And we know, I think it's very 02:43:05  
 11 clearly in the record here, that Zuffa has 02:43:08  
 12 had very large interest costs because of 02:43:10  
 13 [REDACTED] 02:43:26  
 14 I would have to have parallel 02:43:27  
 15 data, similar data, for these other 02:43:29  
 16 industries. But it's all proprietary and 02:43:31  
 17 it's not available to me. 02:43:35  
 18 I actually have a good deal of 02:43:38  
 19 data for baseball, but I can't use it. I 02:43:41  
 20 don't have it for the other sports. 02:43:44  
 21 Q. All right. Now, if a firm 02:43:47

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1 engages in conduct with anticompetitive 02:43:51  
 2 effects in a relative market and has 02:43:54  
 3 monopsony power and it pays less than 02:44:01  
 4 [REDACTED] 02:44:17  
 5 paying? 02:44:19  
 6 MR. CRAMER: Objection to form. 02:44:20  
 7 A. I think that was compound and 02:44:22  
 8 long and confusing. I'm not sure what 02:44:27  
 9 you're asking me. 02:44:30  
 10 Q. All right. I'd ask you to look 02:44:30  
 11 at Paragraph 106 -- no, wait. Actually 02:44:37  
 12 before we do that, as an economist, I want 02:44:40  
 13 to ask you if you agree with a couple of 02:44:49  
 14 statements. 02:44:51  
 15 Do you agree with this statement 02:44:52  
 16 "There are well recognized economic 02:44:54  
 17 benefits to exclusive deal arrangements 02:44:57  
 18 including the enhancement of interbrand 02:44:59  
 19 competition." 02:45:05  
 20 A. Possible. Yes. I know that 02:45:07  
 21 there is some literature on that, and some 02:45:09  
 22 argumentation around that, and I suspect 02:45:11



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1 A. Yes. So, as I said, MLS went 02:48:56  
 2 through a court case in 1999, and the 02:48:58  
 3 District Court decided that it was a single 02:49:01  
 4 entity. And they do all of their hiring, 02:49:03  
 5 except Beckham exception players, through 02:49:10  
 6 the central office. 02:49:15

7 That is to say, there is a fellow 02:49:16  
 8 sitting in their office, their headquarters 02:49:18  
 9 in New York City, who hires all the players 02:49:20  
 10 and then allocates them to the teams, 02:49:24  
 11 except for the Beckham exception players. 02:49:26

12 So it's basically a monopsony, 02:49:30  
 13 maybe slightly modified at the edges. It 02:49:36  
 14 would be an inappropriate benchmark for 02:49:39  
 15 seeing what would happen in Zuffa if there 02:49:41  
 16 were competitive labor markets because 02:49:44  
 17 there are not competitive labor markets in 02:49:45  
 18 MLS. 02:49:47

19 I think you asked me about tennis 02:49:49  
 20 and golf as well? 02:49:50

21 Q. I also want to know why didn't 02:49:52  
 22 you use professional tennis as a benchmark? 02:49:54

23 A. So I'll answer that with respect 02:49:57  
 24 to men's tennis. And if you want to ask me 02:50:02  
 25 about women's tennis afterwards, you can. 02:50:05

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1 Men's tennis is governed by the 02:50:09  
 2 Association of Tennis Professionals, or 02:50:11  
 3 ATP. They set the rules. They set the 02:50:14  
 4 prize money. They collaborate with the 02:50:17  
 5 grand slams. And if you want to be -- if 02:50:19  
 6 you want to participate in the grand slams, 02:50:24  
 7 if you want to be recognized in the major 02:50:27  
 8 tournaments, if you want to be nationally 02:50:29  
 9 and internationally ranked, you play in the 02:50:31  
 10 ATP tournaments. They, too, are a single 02:50:34  
 11 employer. 02:50:37

12 Q. Does the Men's Tennis Association 02:50:39  
 13 have anything to do with determining -- 02:50:50  
 14 what are the constraints that the men's 02:50:56  
 15 tennis -- the ATP puts on the percentage of 02:50:58  
 16 revenue that's paid to the men's tennis 02:51:01  
 17 players? 02:51:05

18 A. They apply no such constraint. 02:51:05

19 Q. I have the same questions about 02:51:08  
 20 professional women's tennis. How -- 02:51:11

21 A. Okay. However, if I could, what 02:51:13  
 22 they set is the prize money, the purse. 02:51:16  
 23 And each tournament has an expected 02:51:18  
 24 revenue. So implicitly they're ballparking 02:51:21  
 25 a share, but that's not what their policy 02:51:26

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1 addresses. Their policy addresses the 02:51:29  
 2 amount that they pay. 02:51:31

3 In terms of women's tennis, it's 02:51:32  
 4 largely the same situation. It's run by 02:51:33  
 5 the WTA. And that also coordinates 02:51:36  
 6 activity with the Tennis Association of 02:51:39  
 7 England, Tennis Association of France and 02:51:43  
 8 Tennis Association of Australia for the 02:51:47  
 9 grand slams. It's a single employer. 02:51:49

10 Q. Why didn't you use NASCAR as a 02:51:51  
 11 potential benchmark? 02:51:55

12 A. NASCAR is a monopoly in the 02:51:57  
 13 stockcar racing industry. It is the sole 02:52:03  
 14 sanctioning body. It also owns -- the 02:52:08  
 15 people who own NASCAR, which is the France 02:52:11  
 16 family, also own the International Speedway 02:52:16  
 17 Corporation, which owns most of the tracks 02:52:19  
 18 that NASCAR races on. And they, again, get 02:52:21  
 19 to set prices. 02:52:24

20 Q. And why didn't you use any firms 02:52:34  
 21 outside of sports as a benchmark? 02:52:37

22 A. I was looking for benchmarks and 02:52:43  
 23 comparators that had as much similarity as 02:52:46  
 24 possible with Zuffa, with MMA. 02:52:49

25 Q. And why would, for example, the 02:52:55

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1 Major League Baseball have more 02:53:04  
 2 similarities to Zuffa than every other firm 02:53:07  
 3 outside of sports? Is it just because it's 02:53:11  
 4 a sport? 02:53:14

5 A. No. Their revenue streams are 02:53:15  
 6 similar to each other. They're selling 02:53:18  
 7 tickets, they're selling media rights and 02:53:21  
 8 television rights. They're selling 02:53:25  
 9 sponsorships. They have to cover on the 02:53:28  
 10 cost side. They have to cover the cost of 02:53:29  
 11 their athletic talent. They have to either 02:53:31  
 12 rent or pay for in another way the 02:53:35  
 13 facilities that they're playing in. They 02:53:37  
 14 have to pay in one measure or another for 02:53:38  
 15 the travel of the athletes. 02:53:40

16 But the structure and the nature 02:53:42  
 17 of the items that are involved on the 02:53:44  
 18 revenue side and the cost side are very 02:53:46  
 19 similar. 02:53:48

20 Q. So why didn't you include any 02:53:48  
 21 firms outside of sports that sell tickets 02:53:50  
 22 and media rights? 02:53:53

23 A. Well, one of the reasons I didn't 02:53:55  
 24 look further, other than to have a footnote 02:54:02  
 25 about the movie industry, which you were 02:54:05



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1 kind enough to notice, is because I'm a 02:54:09  
 2 sports economist and I understand the 02:54:11  
 3 supports industry and I might have gone out 02:54:13  
 4 and looked for Showcase Cinemas, for 02:54:15  
 5 instance. They sell tickets. They don't 02:54:19  
 6 sell television rights, but they sell 02:54:21  
 7 tickets. 02:54:24  
 8 So I might have tried to find 02:54:24  
 9 some of those firms, but I don't know a 02:54:26  
 10 great deal about them. And I felt 02:54:28  
 11 comfortable with the nature of what happens 02:54:29  
 12 in the sports leagues and the team sports 02:54:34  
 13 leagues and in boxing to say that it's 02:54:36  
 14 sufficiently similar and that I can account 02:54:38  
 15 for and understand any differences with 02:54:41  
 16 Zuffa. And so I chose them. 02:54:43

17 Q. Is it fair to say that because of 02:54:46  
 18 your background and knowledge with sports 02:54:48  
 19 economics that you didn't investigate as 02:54:56  
 20 potential yardsticks firms that were out -- 02:54:58  
 21 that were not in the sports industry? 02:55:02  
 22 MR. CRAMER: Objection to form. 02:55:04  
 23 A. Part of the story is gaining 02:55:06  
 24 access to information. The sports industry 02:55:09  
 25 has an enormous amount that's written about 02:55:11

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1 it in detail. There are agencies out there 02:55:14  
 2 and magazines out there and reporters out 02:55:18  
 3 there like Forbes and like Spotcast, Spot 02:55:19  
 4 Track rather, that make it their business 02:55:23  
 5 to gather information from teams and 02:55:25  
 6 assemble data. 02:55:27  
 7 I also have contact with the 02:55:31  
 8 leagues and the labor associations, with 02:55:33  
 9 the commissioner's offices. I was able to 02:55:36  
 10 gather additional data from them. 02:55:39  
 11 What I always do when I do legal 02:55:42  
 12 consulting, when I do expert work is to try 02:55:47  
 13 to limit the amount of wasted time that I 02:55:50  
 14 engage in. And I felt, A, that it's the 02:55:52  
 15 sports industry and has the same basic 02:55:56  
 16 revenue sources and the same nature of 02:55:59  
 17 costs. 02:56:02  
 18 B, that I understand it. And I 02:56:02  
 19 understand some of the nuances of these 02:56:05  
 20 industries. 02:56:07  
 21 And, C, that I had much better 02:56:08  
 22 access to the data that I would need. So 02:56:11  
 23 that it made little sense in my mind for me 02:56:14  
 24 to go out fishing for some other industries 02:56:18  
 25 that might have similar structures, revenue 02:56:20

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1 and cost structures, where I didn't 02:56:22  
 2 understand the nuances as well and where I 02:56:25  
 3 wouldn't necessarily get access to data. 02:56:27  
 4 Q. You've answered this question, 02:56:29  
 5 but that was such a long answer that need 02:56:32  
 6 to get it down to that last part. 02:56:34  
 7 You said you didn't go fishing, 02:56:37  
 8 because of the knowledge you already had 02:56:40  
 9 about the sports industry. You didn't 02:56:42  
 10 investigate the firms that would have been 02:56:44  
 11 potential yardsticks outside of the sports 02:56:46  
 12 industry; is that correct? 02:56:48  
 13 MR. CRAMER: Objection to form. 02:56:48  
 14 Asked and answered. He gave you the 02:56:50  
 15 answer. If you'd like him to restate 02:56:51  
 16 it, you can. 02:56:53  
 17 MR. ISAACSON: I would like him 02:56:54  
 18 to answer the question I just gave. 02:56:57  
 19 A. Yes, so I agree with part of your 02:56:59  
 20 answer, but you misstated or you 02:57:01  
 21 understated my response. As a part of it 02:57:02  
 22 had to do with similarity and a part of it 02:57:04  
 23 had to do with access to information. 02:57:07  
 24 Q. Is there some reason from the 02:57:09  
 25 point of view of economics that assuming a 02:57:13

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1 software company is in a competitive 02:57:17  
 2 industry and assuming a sports company is 02:57:19  
 3 in a competitive industry, that the 02:57:22  
 4 percentage of revenue paid to labor would 02:57:25  
 5 be different? 02:57:29  
 6 A. It has to do with the technology 02:57:30  
 7 of the production process. Right? I mean, 02:57:33  
 8 some production processes are very capital 02:57:37  
 9 intensive and some are very labor 02:57:40  
 10 intensive. Sports are very labor 02:57:42  
 11 intensive, as a general matter. 02:57:44  
 12 So I'd want to be comparing it to 02:57:45  
 13 industries that are similar in the sense 02:57:50  
 14 that they're labor intensive. Software 02:57:51  
 15 companies are probably pretty capital 02:57:53  
 16 intensive. You wouldn't expect the same 02:57:55  
 17 kind of labor share. 02:57:58  
 18 The labor share is determined by 02:57:59  
 19 the productivity of the labor times the 02:58:01  
 20 number of laborers. Productivity of labor 02:58:05  
 21 is much higher when it's more capital 02:58:08  
 22 intensive. 02:58:10  
 23 Q. Can I ask you to look at 02:58:11  
 24 Paragraph 91 of your report? 02:58:17  
 25 A. I'm there. 02:58:34